

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3840 of 17 March, 2011

LEGAL NOTICE NO. 27 OF 2011.

INTERPRETATION AND GENERAL CLAUSES ACT

**FINANCIAL SERVICES (LISTING OF SECURITIES)
(AMENDMENT) REGULATIONS 2011**

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended by Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Listing of Securities) (Amendment) Regulations 2011 and come into operation on the day of publication.

Amendment of the Financial Services (Listing of Securities) Act 2006.

2.(1) The Financial Services (Listing of Securities) Act 2006 is amended in accordance with the provisions of this regulation.

(2) The following is inserted prior to section 1—

“CHAPTER I

PART I

PRELIMINARY AND INTERPRETATION”.

(3) The following is inserted after section 2—

“PART II

**ADMISSION OF SECURITIES TO OFFICIAL
STOCK MARKET LISTINGS”.**

- (4) Section “7” is renumbered “34”.
- (5) Section 6(3) is repealed.
- (6) The following is inserted after section 6–

“CHAPTER II

PART I

**TRANSPARENCY REQUIREMENTS IN RELATION TO
INFORMATION ABOUT ISSUERS**

Subject matter and scope of this Chapter.

- 7.(1) This Chapter establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within the European Union.
- (2) This Chapter does not apply to units issued by collective investment undertakings other than the closed-end type, or to units acquired or disposed of in such collective investment undertakings.

Interpretation of Chapter.

- 8.(1) In this Chapter, and unless the context otherwise requires–

“collective investment undertaking other than the closed-end type”
means unit trusts and investment companies–

- (i) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading; and

- (ii) the units of which are, at the request of the holder of such units, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings;

“controlled undertaking” means any undertaking–

- (i) in which a natural person or legal entity has a majority of the voting rights; or
- (ii) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
- (iii) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or
- (iv) over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control;

“credit institution” means a person licensed as such under the provisions of the Financial Services (Banking) Act;

“debt securities” means bonds or other forms of transferable securitised debts, with the exception of securities which are equivalent to shares in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares;

“electronic means” are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;

“home Member State” means–

- (i) in the case of an issuer of debt securities the denomination per unit of which is less than EUR 1,000 or an issuer of shares–
 - (a) where the issuer is incorporated in the European Union, Gibraltar or the Member State in which it has its registered office;
 - (b) where the issuer is incorporated in a non European Union country, Gibraltar or the Member State in which it is required to file the annual information with the competent authority in accordance with Article 10 of Directive 2003/71/EC which, in the case of Gibraltar, means with the regulatory authority in accordance with section 3 of the Prospectuses Act 2005,

and the definition of “home” Member State is applicable to debt securities in a currency other than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1,000, unless it is nearly equivalent to EUR 1,000;

- (ii) for any issuer not covered by paragraph (i), Gibraltar or the Member State chosen by the issuer from among the places in which the issuer has its registered office and those which have admitted its securities to trading on a regulated market on their territory, provided that –
 - (a) the issuer may choose only Gibraltar or one Member State as its home Member State, and
 - (b) that its choice remains valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the European Union;

“host Member State” means Gibraltar or the Member State in which securities are admitted to trading on a regulated market, if different from the home Member State;

“issuer” means a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository

receipts representing securities, the issuer of the securities represented;

“management company” means a company as defined in section 5 of the Financial Services (Collective Investment Schemes) Act 2005;

“market maker” means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him;

“regulated information” means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under this Chapter, under section 10 of the Market Abuse Act 2005, or under any requirements imposed by the regulatory authority pursuant to section 9(1);

“regulated market” means a market as defined in section 2 of the Financial Services (Markets in Financial Instruments) Act 2006;

“securities” means transferable securities as defined in section 2 of the Financial Services (Markets in Financial Instruments) Act 2006 with the exception of money-market instruments, as defined therein, having a maturity of less than 12 months;

“securities issued in a continuous or repeated manner” means debt securities of the same issuer on tap or at least two separate issues of securities of a similar type and/or class;

“shareholder” means any natural person or legal entity who holds, directly or indirectly—

- (i) shares of the issuer in its own name and on its own account;
- (ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity;

- (iii) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts;

“units of a collective investment undertaking” means securities issued by a collective investment undertaking and representing rights of the participants in such an undertaking over its assets.

- (2) For the purposes of the definition of “controlled undertaking” in subsection (1), the holder's rights in relation to voting, appointment and removal shall include the rights of any other undertaking controlled by the shareholder and those of any natural person or legal entity acting, albeit in its own name, on behalf of the shareholder or of any other undertaking controlled by the shareholder.

Integration of securities markets.

9.(1) Where Gibraltar is the home Member State of an issuer, the regulatory authority may make—

- (a) an issuer subject to requirements more stringent than those laid down in this Chapter;
- (b) a holder of shares, or a natural person or legal entity referred to in sections 16 or 17(8), subject to requirements more stringent than those laid down in this Chapter.

(2) Where Gibraltar is the host Member State of an issuer, the regulatory authority may not—

- (a) as regards the admission of securities to a regulated market in Gibraltar, impose disclosure requirements more stringent than those laid down in this Chapter or in section 10 of the Market Abuse Act 2005;
- (b) as regards the notification of information, make a holder of shares, or a natural person or legal entity referred to in sections 16 or 17(8), subject to

requirements more stringent than those laid down in this Chapter.

PART II

PERIODIC INFORMATION

Annual financial reports.

10.(1) An issuer of securities to which this Chapter applies shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least five years.

(2) The annual financial report shall comprise—

- (a) the audited financial statements;
- (b) the management report; and
- (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge—
 - (i) the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole; and
 - (ii) the management report includes a fair review of the development and performance of the business; and
 - (iii) the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

(3) Where the issuer—

- (a) is required to prepare consolidated accounts according to the provisions of the Companies (Consolidated Accounts) Act 1999, the audited financial statements shall comprise such consolidated accounts drawn up in accordance with Regulation (EC) No 1606/2002 and the annual accounts of the parent company drawn up in accordance with the laws of the Member State in which the parent company is incorporated;
 - (b) is not required to prepare consolidated accounts, the audited financial statements shall comprise the accounts prepared in accordance with the laws of the Member State in which the company is incorporated.
- (4) The financial statements shall be–
- (a) audited in accordance with section 10 of the Companies (Accounts) Act 1999 and, if the issuer is required to prepare consolidated accounts, audited, in accordance with the provisions of the Companies (Consolidated Accounts) Act 1999;
 - (b) signed by the person or persons responsible for auditing the financial statements; and
 - (c) disclosed in full to the public together with the annual financial report.
- (5) The management report shall be drawn up in accordance with Schedule 10 of the Companies (Accounts) Act 1999 and, if the issuer is required to prepare consolidated accounts, in accordance with section 33 of the Companies (Consolidated Accounts) Act 1999.

Half-yearly financial reports.

11.(1) The issuer of shares or of debt securities shall–

- (a) make public a half-yearly financial report covering the first six months of the financial year as soon as

possible after the end of the relevant period, but at the latest two months thereafter;

- (b) ensure that the half-yearly financial report remains available to the public for at least five years.

(2) The half-yearly financial report shall comprise–

- (a) the condensed set of financial statements;
- (b) an interim management report; and
- (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that–

- (i) to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required under subsection (3); and
- (ii) that the interim management report includes a fair review of the information required under subsection (4).

(3) Where the issuer–

- (a) is required to prepare consolidated accounts, the condensed set of financial statements shall be prepared in accordance with the international accounting standard applicable to the interim financial reporting adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002;
- (b) is not required to prepare consolidated accounts, the condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these

accounts. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports.

- (4) The interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year; and, for issuers of shares, the interim management report shall also include major related parties transactions.
- (5) If the half-yearly financial report has been audited, the audit report and review shall be reproduced in full; and where the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

Interim management statements.

12.(1) The following provisions apply–

- (a) an issuer whose shares are admitted to trading on a regulated market shall make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year;
- (b) such statement shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period;
- (c) such statement shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement, and shall provide–
 - (i) an explanation of material events and transactions that have taken place during the

relevant period and their impact on the financial position of the issuer and its controlled undertakings, and

- (ii) a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.
- (2) The management of issuers of securities which, under either Gibraltar law, or the rules of the regulated market or of their own initiative, publish quarterly financial reports in accordance with such legislation or rules shall not be required to make the public statements provided for in subsection (1).

Responsibility and liability.

- 13.(1) It shall be the responsibility of the issuer or its administrative, management or supervisory bodies to draw up and make public the information required in accordance with sections 10, 11, 12 and 20.
- (2) An issuer or its administrative, management or supervisory bodies or any person responsible within the issuer that fails to comply with the provisions of subsection (1) is guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

Exemptions.

- 14.(1) Sections 10, 11 and 12 shall not apply to the following issuers—
- (a) the Government or the Gibraltar Development Corporation or other statutory bodies for whose liabilities the Government is responsible under a law; and
 - (b) an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 50,000 or, in the case of debt securities denominated in a currency other than Euro, the value of such denomination per unit is, at

the date of the issue, equivalent to at least EUR 50,000.

- (2) The regulatory authority may choose not to apply section 11 to credit institutions having Gibraltar as the home Member State whose shares are not admitted to trading on a regulated market and which have, in a continuous or repeated manner, only issued debt securities provided that the total nominal amount of all such debt securities remains below EUR 100,000,000 and that they have not published a prospectus under the Prospectuses Act 2005.
- (3) The regulatory authority may choose not to apply section 11 to issuers having Gibraltar as the home Member State and already existing at the date of the entry into force of the Prospectuses Act 2005 which exclusively issue debt securities unconditionally and irrevocably guaranteed by the Government on a regulated market.

PART III

ONGOING INFORMATION

Notification of the acquisition or disposal of major holdings.

15.(1) Where Gibraltar is the home Member State of an issuer—

- (a) the regulatory authority shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %; and
- (b) the voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended, and this information shall also be given in respect of all the shares which

are in the same class and to which voting rights are attached.

- (2) Where Gibraltar is the home Member State of an issuer, the regulatory authority shall ensure that the shareholders notify the issuer of the proportion of voting rights, where that proportion reaches, exceeds or falls below the thresholds provided for in subsection (1), as a result of events changing the breakdown of voting rights, and on the basis of the information disclosed pursuant to section 19; and where the issuer is incorporated in a non-European Union country, the notification shall be made for equivalent events.
- (3) Where Gibraltar is the home Member State of an issuer, the regulatory authority need not apply—
 - (a) the 30 % threshold, where it applies a threshold of one-third;
 - (b) the 75% threshold, where it applies a threshold of two-thirds.
- (4) This section shall not apply to shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, or to custodians holding shares in their custodian capacity provided such custodians can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means.
- (5) This section shall not apply to the acquisition or disposal of a major holding reaching or crossing the 5% threshold by a market maker acting in its capacity of a market maker, provided that -
 - (a) it is authorised by its home Member State under Directive 2004/39/EC; and
 - (b) it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price.

- (6) Where Gibraltar is the home Member State of an issuer which is a credit institution or investment firm, the regulatory authority may decide that voting rights held in its trading book, as defined in section 3 of the Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007, shall not be counted for the purposes of this section provided that—
- (a) the voting rights held in the trading book do not exceed 5%; and
 - (b) the credit institution or investment firm ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the issuer.

Acquisition or disposal of major proportions of voting rights.

16. The notification requirements defined in subsections (1) and (2) of section 15 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them—
- (a) voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
 - (b) voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
 - (c) voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
 - (d) voting rights attaching to shares in which that person or entity has the life interest;

- (e) voting rights which are held, or may be exercised within the meaning of paragraphs (a) to (d), by an undertaking controlled by that person or entity;
- (f) voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
- (g) voting rights held by a third party in its own name on behalf of that person or entity;
- (h) voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.

Procedures on the notification and disclosure of major holdings.

- 17.(1) The notification required under sections 15 and 16 shall include the following information–
- (a) the resulting situation in terms of voting rights;
 - (b) the chain of controlled undertakings through which voting rights are effectively held, if applicable;
 - (c) the date on which the threshold was reached or crossed; and
 - (d) the identity of the shareholder, even if that shareholder is not entitled to exercise voting rights under the conditions laid down in section 16, and of the natural person or legal entity entitled to exercise voting rights on behalf of that shareholder.
- (2) The notification to the issuer shall be effected as soon as possible, but not later than four trading days, the first of which shall be the day after the date on which the shareholder, or the natural person or legal entity referred to in section 16–

- (a) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or
 - (b) is informed about the event mentioned in section 15(2).
- (3) An undertaking shall be exempted from making the required notification in accordance with subsection (1) if the notification is made by the parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.
- (4) The following provisions apply–
 - (a) the parent undertaking of a management company shall not be required to aggregate its holdings under sections 15 and 16 with the holdings managed by the management company under the conditions laid down in the Financial Services (Collective Investment Schemes) Act 2005, provided such management company exercises its voting rights independently from the parent undertaking;
 - (b) sections 15 and 16 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such management company and the management company has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.
- (5) The parent undertaking of an investment firm authorised under the Financial Services (Markets in Financial Instruments) Act 2006 shall not be required to aggregate its holdings under sections 15 and 16 with the holdings which such investment firm manages on a client-by-client basis provided that–

- (a) the investment firm is authorised to provide such portfolio management under point 4 of Section A of Schedule 1 to Financial Services (Markets in Financial Instruments) Act 2006;
- (b) it may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under the Financial Services (Collective Investment Schemes) Act 2005 by putting into place appropriate mechanisms; and
- (c) the investment firm exercises its voting rights independently from the parent undertaking,

save that, sections 15 and 16 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such investment firm and the investment firm has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

- (6) Upon receipt of the notification under subsection (1), but no later than three trading days thereafter, the issuer shall make public all the information contained in the notification.
- (7) Where Gibraltar is the home Member State of an issuer, the regulatory authority may exempt the issuer from the requirement in subsection (6) if the information contained in the notification is made public by its regulatory authority, under the conditions laid down in section 25 upon receipt of the notification, but no later than three trading days thereafter.
- (8) The notification requirements laid down in section 15 shall also apply to a natural person or legal entity who holds, directly or indirectly, financial instruments that result in an entitlement to acquire, on such holder's own initiative alone,

under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market.

Repurchase of shares.

18. Where Gibraltar is the home Member State of an issuer of shares admitted to trading on a regulated market who acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, the regulatory authority shall ensure that the issuer makes public the proportion of its own shares as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights. The proportion shall be calculated on the basis of the total number of shares to which voting rights are attached.

Threshold calculations in section 15.

19. Where Gibraltar is the home Member State of the issuer, the regulatory authority shall, for the purpose of calculating the thresholds provided for in section 15, at least require the disclosure to the public by the issuer of the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred.

Additional information.

- 20.(1) The issuer of shares admitted to trading on a regulated market shall make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer.
- (2) The issuer of securities, other than shares admitted to trading on a regulated market, shall make public without delay any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these

securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

- (3) The issuer of securities admitted to trading on a regulated market shall make public without delay of new loan issues and in particular of any guarantee or security in respect thereof.

Information requirements for issuers whose shares are admitted to trading on a regulated market.

21.(1) The issuer of shares admitted to trading on a regulated market shall ensure equal treatment for all holders of shares who are in the same position.

- (2) The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in Gibraltar where Gibraltar is the home Member State, and that the integrity of data is preserved, and shareholders shall not be prevented from exercising their rights by proxy, subject to the law of Gibraltar where the issuer is incorporated in Gibraltar. The issuer shall, in particular—
 - (a) provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;
 - (b) make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders' meeting, together with the notice concerning the meeting or, on request, after an announcement of the meeting;
 - (c) designate as its agent a financial institution through which shareholders may exercise their financial rights; and
 - (d) publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

- (3) For the purposes of conveying information to shareholders and where Gibraltar is the home Member State of the issuer, the regulatory authority shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions–
- (a) the use of electronic means shall in no way depend upon the location of the seat or residence of the shareholder or, in the cases referred to in section 16(a) to (h), of the natural persons or legal entities;
 - (b) identification arrangements shall be put in place so that the shareholders, or the natural persons or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;
 - (c) shareholders, or in the cases referred to in section 16(a) to (e) the natural persons or legal entities entitled to acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given, provided that they shall be able to request, at any time in the future, that information be conveyed in writing; and
 - (d) any apportionment of the costs entailed in the conveyance of such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in subsection (1).

Information requirements for issuers whose debt securities are admitted to trading on a regulated market.

22.(1) The issuer of debt securities admitted to trading on a regulated market shall ensure that all holders of debt securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those debt securities.

- (2) The issuer shall ensure that–

- (a) all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in Gibraltar, where Gibraltar is the home Member State of the issuer ;
 - (b) the integrity of data is preserved;
 - (c) debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of Gibraltar where the issuer is incorporated in Gibraltar. In particular, the issuer shall–
 - (i) publish notices, or distribute circulars, concerning the place, time and agenda of meetings of debt securities holders, the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights and repayment, as well as the right of those holders to participate therein;
 - (ii) make available a proxy form on paper or, where applicable, by electronic means, to each person entitled to vote at a meeting of debt securities holders, together with the notice concerning the meeting or, on request, after an announcement of the meeting; and
 - (iii) designate as its agent a financial institution through which debt securities holders may exercise their financial rights.
- (3) If only holders of debt securities whose denomination per unit amounts to at least EUR 50,000 or, in the case of debt securities denominated in a currency other than Euro, whose denomination per unit is, at the date of the issue, equivalent to at least EUR 50,000, are to be invited to a meeting, the issuer may choose as venue Gibraltar or any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that venue.

- (4) For the purposes of conveying information to debt securities holders the regulatory authority, where Gibraltar is the home Member State, or the Member State chosen by the issuer pursuant to subsection (3), shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions–
- (a) the use of electronic means shall in no way depend upon the location of the seat or residence of the debt security holder or of a proxy representing that holder;
 - (b) identification arrangements shall be put in place so that debt securities holders are effectively informed;
 - (c) debt securities holders shall be contacted in writing to request their consent for the use of electronic means for conveying information and if they do not object within a reasonable period of time, their consent shall be deemed to be given, provided that they shall be able to request, at any time in the future, that information be conveyed in writing; and
 - (d) any apportionment of the costs entailed in the conveyance of information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in subsection (1).

Control by the regulatory authority.

23.(1) This section applies where Gibraltar is the home Member State of an issuer.

- (2) Whenever an issuer–
- (a) or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the regulatory authority, which may decide to publish such filed information on its website;

- (b) proposes to amend its instrument of incorporation or statutes, it shall communicate the draft amendment to the regulatory authority and to the regulated market to which its securities have been admitted to trading. Such communication shall be effected without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.
- (3) The regulatory authority may exempt an issuer from the requirement under subsection (2) in respect of information disclosed in accordance with section 10 of the Market Abuse Act 2005 or section 17(6) of this Chapter.
- (4) Information to be notified to the issuer in accordance with sections 15, 16 and 17 shall at the same time be filed with the regulatory authority.

Languages.

- 24.(1) Where securities are admitted to trading on a regulated market only in Gibraltar as the home Member State, regulated information shall be disclosed in English.
- (2) Where securities are admitted to trading on a regulated market both in Gibraltar as the home Member State and in one or more host Member States, regulated information shall be disclosed–
 - (a) in English; and
 - (b) depending on the choice of the issuer, either in a language accepted by the competent authorities of those host Member States or in a language customary in the sphere of international finance.
- (3) Where securities are admitted to trading on a regulated market in one or more host Member States, but not in Gibraltar as the home Member State–
 - (a) regulated information shall, depending on the choice of the issuer, be disclosed either in a language

accepted by the competent authorities of those host Member States or in a language customary in the sphere of international finance; and

- (b) the regulatory authority may decide that the regulated information shall, depending on the choice of the issuer, be disclosed either in English or in a language customary in the sphere of international finance.
- (4) Where securities are admitted to trading on a regulated market without the issuer's consent, the obligations under subsections (1), (2) and (3) shall be incumbent upon the person who, without the issuer's consent, has requested such admission.
- (5) Shareholders and the natural person or legal entity referred to in sections 15, 16 and 17(8) may notify information to an issuer under this Chapter only in a language customary in the sphere of international finance; and if the issuer receives such a notification, the regulatory authority may not require the issuer to provide a translation.
- (6) By way of derogation from subsections (1) to (4), where securities whose denomination per unit amounts to at least EUR 50,000 or, in the case of debt securities denominated in a currency other than Euro, equivalent to at least EUR 50,000 at the date of the issue, are admitted to trading on a regulated market in Gibraltar and or in a Member State, regulated information shall be disclosed to the public either in a language accepted by the regulatory authority and the regulatory authority of the host Member State or in a language customary in the sphere of international finance, at the choice of the issuer or of the person who, without the issuer's consent, has requested such admission.
- (7) Where an action concerning the content of regulated information is brought before a court or tribunal, responsibility for the payment of costs incurred in the translation of that information for the purposes of the proceedings shall be decided in accordance with the law applicable to that action.

Access to regulated information.

- 25.(1) Where Gibraltar is the home Member State of an issuer—
- (a) the regulatory authority shall ensure that the issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner that ensures fast access to such information on a non-discriminatory basis and makes it available to the officially appointed mechanism referred to in subsection (2);
 - (b) the issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, may not charge investors any specific cost for providing the information;
 - (c) the regulatory authority shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the European Union; and
 - (d) the regulatory authority may not impose an obligation to use only media whose operators are established in Gibraltar.
- (2) Where Gibraltar is the home Member State of an issuer, the regulatory authority shall ensure that there is at least one officially appointed mechanism for the central storage of regulated information.
- (3) The regulatory authority shall ensure that the mechanism referred to in subsection (2) is aligned with the filing procedure under section 23(1) and complies with such requirements as the authority shall set in relation to minimum quality standards of security, certainty as to the information source, time recording and easy access by end users.
- (4) Where securities are admitted to trading on a regulated market in Gibraltar as a host Member State, the regulatory authority

shall ensure disclosure of regulated information in accordance with the requirements referred to in subsection (1).

Guidelines.

26. The regulatory authority shall draw up appropriate guidelines with a view to further facilitating public access to information to be disclosed under the Market Abuse Act 2005, the Prospectuses Act 2005 and this Chapter, in order to facilitate the creation of—
- (a) an electronic network between national securities regulators, operators of regulated markets and national company registers covered by the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent throughout the European Union; and
 - (b) a single electronic network, or a platform of electronic networks across Member States.

Non-European Union States.

- 27.(1) Where the registered office of an issuer is outside the European Union—
- (a) the regulatory authority, where Gibraltar is the home Member State of the issuer, may exempt that issuer from requirements under sections 10 to 13, 17(6) and 18 to 22, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the regulatory authority considers as equivalent;
 - (b) the information covered by the requirements laid down in the third country shall be filed in accordance

with section 23 and disclosed in accordance with sections 24 and 25.

- (2) Where Gibraltar is the home Member State of the issuer, the regulatory authority shall ensure that information disclosed in a non-European Union country which may be of importance for the public in the European Union is disclosed in accordance with sections 24 and 25, even if such information is not regulated information within the meaning of section 8(1).
- (3) Undertakings whose registered office is in a non European Union country which would have required an authorisation under the provisions of the Financial Services (Collective Investment Schemes) Act 2005 or, with regard to portfolio management, under point 4 of section A of Schedule 1 of the Financial Services (Markets in Financial Instruments) Act 2006 if it had its registered office or, in the case of an investment firm, its head office within the European Union, shall also be exempted from aggregating holdings with the holdings of its parent undertaking under the requirements laid down in section 17(4) and (5) provided that they comply with equivalent conditions of independence as management companies or investment firms.

The regulatory authority and its powers.

28.(1) The following provisions apply–

- (a) the regulatory authority may, with the consent of the Minister, delegate tasks entrusted to it under this Act. Except for the tasks referred to in subsection (3)(h), any delegation of tasks relating to the obligations provided for in this Chapter shall be reviewed five years after the entry into force of this Chapter and shall end eight years after the entry into force of this Chapter. Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out;
- (b) those conditions shall include a clause requiring the entity in question to be organised in a manner such that conflicts of interest are avoided and information

obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. In any case, the final responsibility for supervising compliance with the provisions of this Chapter and implementing measures adopted pursuant thereto shall lie with the regulatory authority.

- (2) The Minister shall ensure that the Commission and competent authorities in Member States are informed of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.
- (3) The regulatory authority shall have all the powers necessary for the performance of its functions and, without prejudice to the generality of the foregoing, for this purpose the regulatory authority may—
 - (a) require auditors, issuers, holders of shares or other financial instruments, or persons or entities referred to in sections 16 or 17(8), and the persons that control them or are controlled by them, to provide information and documents;
 - (b) require the issuer to disclose the information required under paragraph (a) to the public by the means, and within the time limits, the authority considers necessary. The regulatory authority may publish such information on its own initiative in the event that the issuer, or the persons that control it or are controlled by it, fail to do so and after having heard the issuer;
 - (c) require managers of the issuers and of the holders of shares or other financial instruments, or of persons or entities referred to in sections 16 or 17(8), to notify the information required under this Chapter, and, if necessary, to provide further information and documents;
 - (d) suspend, or request the relevant regulated market to suspend, trading in securities for a maximum of ten days at a time if it has reasonable grounds for

- suspecting that the provisions of this Chapter have been infringed by the issuer;
- (e) prohibit trading on a regulated market if it finds that the provisions of this Chapter have been infringed, or if it has reasonable grounds for suspecting that the provisions of this Chapter have been infringed;
 - (f) monitor that the issuer discloses timely information with the objective of ensuring effective and equal access to the public in all those places in European Union where the securities are traded and take appropriate action if that is not the case;
 - (g) make public the fact that an issuer, or a holder of shares or other financial instruments, or a person or entity referred to in sections 16 or 17(8), is failing to comply with its obligations;
 - (h) examine that information referred to in this Chapter is drawn up in accordance with the relevant reporting framework and take appropriate measures in case of discovered infringements; and
 - (i) apply to a magistrate for a warrant to carry out on-site inspections in order to verify compliance with the provisions of this Chapter.
- (4) The disclosure to the regulatory authority by the auditors of any fact or decision related to the requests made by the regulatory authority under subsection (3)(a) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any law and shall not involve such auditors in liability of any kind.

Professional secrecy and cooperation.

- 29.(1) The duty of professional secrecy shall apply to all persons who work or who have worked for the regulatory authority and for entities to which the regulatory authority may have delegated certain tasks. Information covered by professional

secrecy may not be disclosed to any other person or authority except in accordance with the provisions of this Act.

- (2) The regulatory authority shall cooperate with the competent authorities of Member States whenever necessary, for the purpose of carrying out their duties and making use of their powers and shall render assistance to competent authorities in Member States.
- (3) Subsection (1) shall not prevent the regulatory authority from exchanging confidential information with its counterparts in Member States. Information thus exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the regulatory authority are subject.

Precautionary measures.

- 30.(1) Where Gibraltar is the host Member State of an issuer, and the regulatory authority finds that the issuer or the holder of shares or other financial instruments, or the person or entity referred to in section 16, has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home Member State.
- (2) Where Gibraltar is the host Member State of an issuer and, despite the measures taken by the competent authority of the home Member State, or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the regulatory authority shall, after informing the Minister and the competent authority of the home Member State, take, in accordance with section 9(2), all the appropriate measures in order to protect investors.
- (3) The Minister shall ensure that the Commission is informed at the earliest opportunity of any measures taken pursuant to subsection (2).

Penalties.

- 31.(1) Where an issuer of securities to which this Chapter applies is responsible for any act or omission contrary to the provisions of this Chapter, the regulatory authority may—
- (a) suspend, amend or revoke any licence, approval, permit or authorisation to which the act or omission relates;
 - (b) reprimand the person responsible for such act or omission;
 - (c) impose on such person a penalty not exceeding £10,000 recoverable summarily as a civil debt.
- (2) The regulatory authority may disclose to the public every measure taken or penalty imposed for infringement of the provisions of this Chapter, save where such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Right of appeal.

32. Any decision taken by the regulatory authority under this Chapter shall be subject to appeal to a judge of the Supreme Court on a point of law.

PART IV

TRANSITIONAL AND FINAL PROVISIONS

Transitional provisions.

- 33.(1) Notwithstanding—
- (a) section 17(2), a shareholder shall notify the issuer, at the latest 2 months after the coming into force of this section, of the proportion of voting rights and capital it holds, in accordance with sections 15, 16 and 17(8), with issuers at that date, unless it has already made a

notification containing equivalent information before that date;

- (b) section 17(6), an issuer shall in turn disclose the information received in those notifications no later than 3 months after the coming into force of this section.

(2) Where an issuer is incorporated in a non-European Union country and Gibraltar is the home Member State of the issuer, the regulatory authority may exempt such issuer only in respect of those debt securities which have already been admitted to trading on a regulated market in the European Union prior to 1 January 2005 from drawing up its financial statements in accordance with section 10(3) and its management report in accordance with section 10(5) as long as—

- (a) the regulatory authority acknowledges that annual financial statements prepared by issuers from such a country give a true and fair view of the issuer's assets and liabilities, financial position and results;
- (b) the country where the issuer is incorporated has not made mandatory the application of international accounting standards referred to in Article 2 of Regulation (EC) No 1606/2002; and
- (c) the Commission has not taken any decision as to whether there is an equivalence between the abovementioned accounting standards and
 - (i) the accounting standards in force in the country where the issuer is incorporated, or
 - (ii) the accounting standards of the country such an issuer has elected to comply with.”.

Dated 17th March, 2011.

P R CARUANA,
Chief Minister,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose into the law of Gibraltar Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

The Regulations update disclosure rules by issuers of equity and debt securities with a listing in a stock exchange.